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Paula Branca-Santos

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INJUSTICE IGNORED: THE INTERNMENT OF ITALIAN - AMERICANS DURING WORLD WAR II

Paula Branca-Santos[†]

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I. INTRODUCTION

"I believe myself to be good, but find myself deceived. I don't know why."¹ This chilling statement was written in a sui-

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¹ Hon. Dominic Massaro, Remarks at the Opening Ceremony of the Storia Segreta (Secret History) exhibit in New York (Nov. 6, 1995), in 143 CONG. REC. E1350-03, *E1350 (*cited by* Rep. Eliot Engel in his remarks in The House of Representatives (June 26, 1997)) [hereinafter Remarks].

cide note by Mr. Stefano Terranova in 1942 who, at the age of 65, leapt to his death from a three story building.² At least three other Italian-American men must have shared in Mr. Terranova's feelings of despair, for within a five-day period in February of 1942, they all sealed their own fates.³ Mr. Martini Battistessa, age 65, threw himself in front of a passing railroad train.⁴ Mr. Giuseppe Michele, age 57, used a butcher knife to cut his throat. Mr. Giovanni Sanguenetti, age 62, hanged himself.⁵

In a world filled with violence and death, events such as these, although tragic, do not generally stir up too much attention. Suicides are all too common, and in light of the situation of the United States in 1942, a country at war, these particular suicides committed by Italians in Richmond, Vallejo, Stockton, and San Francisco, went unnoticed.⁶ Perhaps, however, they should not have been overlooked, for if they had been investigated and reported at that moment, a grave injustice would have come to the attention of the world. These men were not simply disillusioned with life, nor had they been deceived by a loved one; rather, they were "despondent over their shameful status as enemies of their adopted country," the United States of America.⁷

The plight of Japanese-Americans during World War II is already etched as a black mark in the history of this country. "Their forced internment is a tragic episode for which the government has apologized and paid compensation to the survi-

² See *id.*; see also STEPHEN FOX, *THE KNOWN INTERNMENT* 1-2 (1990).

³ See *supra* note 1; see also FOX, *supra* note 2; Geoffrey Dunn, *Male Notte (Bad Night): The Untold Story of Italian Relocation During World War II*, *Santa Cruz Public Libraries, California: Local History Articles and Photographs* (visited Oct. 16, 1997), at <http://www.cruzio.com/sclibs/history/ww2/male.html> (reporting that suicides by Italians in the San Francisco Bay Area took place in the early weeks of February, 1942).

⁴ See Remarks, *supra* note 1; see also FOX, *supra* note 2.

⁵ See Remarks, *supra* note 1; see also FOX, *supra* note 2.

⁶ See Remarks, *supra* note 1; see also FOX, *supra* note 2.

⁷ See Office of Congressman Eliot Engel, H.R. 2090 Wartime Violation of Italian American Civil Liberties Act: *Una Storia Segreta Fact Sheet* (1997) (unpublished fact sheet) (on file with the office of Rep. Engel) (stating that "[a]t least four Italian Americans in California, despondent over their shameful status as 'enemies' of their adopted community, commit suicide.") (hereinafter H.R. 2090).

vors.”⁸ The plight of the Italian-Americans, on the other hand, has, until recently, been neglected and even refuted.⁹ Commentators have actually asserted that “the classification of ‘American citizens of Japanese ancestry for the purpose of meeting the dangers of sabotage can be challenged as under inclusive, because American citizens of Italian ancestry were equally under the strain of divided loyalty.’”¹⁰

The New York Times, for example, asserted that “[t]he nation was at war with Germany and Italy, of course, but there were no moves to lock up any European Americans.”¹¹ The fact that commentators used Italian-Americans as an example of the over-exclusivity of World War II classifications demonstrates the extent to which the ordeal of the Italian-Americans during that period was overlooked.¹² Contrary to popular belief, Italian-Americans were also branded enemy aliens, told to move out of certain areas, and in some instances, were also interned in prison camps.¹³

This article focuses on the plight of the Italian-Americans (predominantly those of the West Coast) during World War II — their forced relocation, adherence to curfews, and internment. Part II will discuss briefly the assimilation of the Italian-Americans in the first half of the century and their perception of America. It will also discuss the buildup of World War II, and the development of United States foreign policy during that period, culminating with the decision of Franklin D. Roosevelt to brand certain groups, enemy aliens. Furthermore, the differences in the plight of Italian-Americans and Japanese-Americans will be evaluated. Part III sets forth the Wartime Violation of Italian-American Civil Liberties Act,¹⁴ recently signed into law by former United States President William Jef-

⁸ *Secret of WWII: Italian-Americans Forced to Move: Were Branded Enemy Aliens*, (Sept. 21, 1997) <http://www.cnn.com/US/9707/21/italian.relocation> [hereinafter *Secret of WWII*].

⁹ See generally H.R. 2090, *supra* note 7. The fact sheet states that history texts and newspapers continue to deny that Italian Americans were affected.

¹⁰ GERALD GUNTHER & KATHLEEN M. SULLIVAN, *CONSTITUTIONAL LAW* 638 (13th ed., University Casebook Series 1997).

¹¹ Dirk Johnson, *War Legacy: Japanese-American Diaspora*, N.Y. TIMES, Aug. 14, 1995, at A8.

¹² See *Secret of WWII*, *supra* note 8.

¹³ See *id.*

¹⁴ H.R. 2090, 105th Cong., 1st Sess. (1997) (enacted).

person Clinton, which calls for an acknowledgment of, and an investigation into, the injustices suffered by many Italian-Americans during World War II.

An evaluation of the bill will be discussed in Part IV in light of the government's powers during times of national emergency. Especially relevant to this section will be the cases of *Korematsu v. United States*¹⁵ and *Hirabayashi v. United States*,¹⁶ where the government's justifications for the violation of Japanese-American civil liberties were set forth. The realistic threats posed by the Italian-Americans will be assessed in light of these cases with a particular emphasis on the activities of Italian-Americans at that time.

In addition, the steps taken by the government post-*Korematsu* to rectify the World War II injustices, in so far as they could be rectified, will be assessed. They can provide a guide for the desired amelioration of the plight of the Italian-Americans. Part V concludes that the government must conduct a full-blown investigation so that this truly unjust and forgotten period of American history can finally be recognized and rectified.

II. BACKGROUND

A. *The Italian-American Assimilation*

What It Means To Be Italian

The immigrant should never abandon his feelings of the value of being an Italian. . . . Keep alive, at all times, the use of your mother tongue and the practice of your own institutions; bring up your children in a love for your Fatherland and teach them the language, history, and geography of Italy. And even if you assume the nationality of the country in which you have settled, never deny and never forget the sublime moral inheritance of your ancestors and transmit to your descendants the sacred flame of the love of the distant fatherland. Thus will you ever remain a true son of that world-extensive and strong Italy.

Long Live Italy, Forever.¹⁷

¹⁵ 323 U.S. 214 (1944).

¹⁶ 320 U.S. 81 (1943).

¹⁷ Fox, *supra* note 2, at 7-8 (quoting PAUL RADIN, *THE ITALIANS OF SAN FRANCISCO: THEIR ADJUSTMENT AND ACCULTURATION* 113 (1975)).

This passionate, patriotic passage was distributed to the many Italians who left their homeland to explore the land of opportunity, the land of freedom, the United States of America. They received this excerpt along with their passports so as to remind them that "space and time placed no limit on their loyalty to the homeland."¹⁸ And, with these words, they departed.

Statistics reveal that between 1901 and 1950, approximately 3,736,405 Italian emigrated to the United States, most of whom came from 1901 to 1920.¹⁹ This era is most commonly referred to as the second great immigration stream.²⁰ California, in particular, attracted many of these immigrants during this time period. "By 1940, 100,911 foreign born Italians (now about half of them naturalized) lived in California. This compares with . . . 33,569 alien Japanese."²¹ Most were concen-

¹⁸ Fox, *supra* note 2, at 7.

¹⁹ See S. DALE MCLEMORE, *RACIAL AND ETHNIC RELATIONS IN AMERICA* 78 (4th ed., 1994). Table 4-4 on that page reflects the Italian Immigration to the United States from 1820 to 1990. It reads:

Years	Number
1820-1830	439
1831-1840	2,253
1841-1850	1,870
1851-1860	9,231
1861-1870	11,725
1871-1880	55,759
1881-1890	307,309
1891-1900	651,893
1901-1910	2,045,877
1911-1920	1,109,524
1921-1930	455,313
1931-1940	68,028
1941-1950	57,661
1951-1960	185,491
1961-1970	214,111
1971-1980	129,368
1981-1990	67,254
Total	5,373,108
Source: U.S. Immigration and Naturalization Service, 1990 Statistical Yearbook 1991: 48-50	

²⁰ See *id.* at 76. The author asserts that the second immigrant stream has proved to be the high point of all immigration to America thus far, and that the Italians were perhaps the most prominent group of newcomers at this time. See *id.* at 76-77.

²¹ Fox, *supra* note 2, at 4.

trated around the San Francisco Bay and other bay areas, where many of the males made a living as fishermen.²²

Whether or not the Italian immigrants were considered assimilated depends upon what one believes the definition of assimilation to be. "If assimilation means the casting off of all vestiges of old-world culture and the speedy adoption of American citizenship,"²³ then many would argue that the Italians indeed were not assimilated. On the other hand, if being assimilated can be measured by "the integration of the immigrants into the American economy and the education of second generation Italians in American values while retaining respect for Italian tradition and culture,"²⁴ then it could be effectively argued that at least the second generation Italian-Americans were in fact assimilated.

It is quite true that many Italians who came to the United States did not readily become naturalized.²⁵ In fact, when World War II broke out in 1941, forty two and a half percent of the Italian immigrants living in the United States had not yet obtained their American citizenships.²⁶ In California, slightly more than half of the Italians remained unnaturalized.²⁷ The aforementioned patriotic passage distributed to these aliens along with their passports²⁸ may have influenced many of them to retain their Italian citizenship for fear of turning their backs on the fatherland. Other factors that may have played a role in the individual determinations of whether or not to become American citizens included: "its necessity in [the immigrants'] daily lives, the time they could devote to preparation for the examination, their educational background, the war, their isolation from native born Americans, and the extent to which they felt "American" rather than Italian."²⁹

²² See *id.*

²³ *Id.* at 6.

²⁴ *Id.*

²⁵ See *id.* at 7.

²⁶ See Fox, *supra* note 2, at 8.

²⁷ See *id.*

²⁸ See Fox, *supra* note 2, at 8.

²⁹ See *id.* at 8-9. The author conveys, through various interviews, the attitudes of many of the Italian immigrants regarding the acquisition of American citizenship before the initiation of World War II. Many had not even received any schooling in Italy prior to coming to the United States and therefore could not study for the citizenship exam. Others were just proud to be part of America in

Many of the immigrants then did not quickly adapt to the American way of life. They did not fully understand the culture, they generally could not speak the English language well, and most clustered together in ethnic communities.³⁰ Such standards, however, may not in fact be the sole indicators of assimilation. Rather, the argument has been made that true assimilation can be judged by "the number of aliens who occupied key economic positions as fishermen, . . . , laborers, or [by the attitudes of those] who planned never to return to their homeland, or believed that merely living in America made them 'American.'"³¹ If this is truly the definition of 'American,' then the Italians were indeed assimilated, for many of them did in fact occupy key economic positions as fishermen (fishing was considered a national priority for the war effort) and shopkeepers, and they did consider themselves to be American.³² The fact that they retained their old world traditions is merely a factor in assessing whether or not they could truly be considered 'true' Americans — a concept which in itself seems almost incapable of proof.

The fact remains that one is classified as an immigrant precisely because he had to come from another country to make his new life in the United States. In that sense, no immigrant can ever be an "American" in the purest form. He must necessarily have his roots in some other place. Unless the United States is prepared to say that no cultures and traditions can be practiced in America other than American traditions, then it cannot be said that just because one retains old-world traditions, he cannot be American.

and of itself and let the intricacies of citizenship fall to the wayside. The use of the language among the immigrants was rampant and the cultures and traditions remained intact. Many simply hated the thought of giving up their Italian citizenship, for they still harbored the basic love for Italy. Still others simply felt that they did not need to obtain an American citizenship because they were only associated with other Italian Americans anyway. *See id.* at 9-20.

³⁰ *See id.* at 20; *see also* MCLEMORE, *supra* note 19, at 79 (stating that the Italians clustered in residential patterns exhibited perhaps the best by the various Little Italys that developed in New York).

³¹ Fox, *supra* note 2, at 21.

³² *See id.*; *see also* James Brooke, *After Silence, Italians Recall the Internment: An Official Apology Is Sought From the U.S.*, N.Y. TIMES, Aug. 11, 1997, at A10.

B. *The Buildup of World War II and the Development of United States Foreign Policy*

It is difficult to believe that the Italians who came to the United States in the early half of the century had any notion that they would one day find themselves at war with their homeland, but that reality began to set in with the global developments of the 1930's. Nazism was slowly advancing across Europe,³³ and the threat of war was becoming increasingly realistic. Initially, United States President Franklin D. Roosevelt was steadfast in his decision to promote peace. In his address commonly known as the "Quarantine Speech", President Roosevelt asserted that it was his "determination to pursue a policy of peace . . . [and] to adopt every practicable measure to avoid involvement in the war."³⁴

President Roosevelt, however, also realized that the political situation of the world was such as to "cause grave concern and anxiety to all peoples and nations who wished to live in peace and amity with their neighbors."³⁵ In fact, by January of 1938, President Roosevelt must have considered the world situation sufficiently grave that he made a recommendation to Congress to increase armament for national defense. He reported that in light of the increasing armaments of other nations, the national defense of the United States was inadequate for the purposes of national security and thus, an increase in armament was required.³⁶ By September of 1938, it was apparent to the President that "the fabric of peace on the continent of Europe, if not throughout the rest of the world, [was] in immediate danger."³⁷ Remaining steadfast in his convictions, however, President Roosevelt continued to assert that it would be the pol-

³³ See *id.* at 2.

³⁴ President Franklin D. Roosevelt, Address at Chicago, Illinois [hereinafter Quarantine Speech] (Oct. 5, 1937), reprinted in DEVELOPMENT OF UNITED STATES FOREIGN POLICY: ADDRESSES AND MESSAGES OF FRANKLIN D. ROOSEVELT 24 (Kraus Reprint Co. 1970) (hereinafter DEVELOPMENT OF UNITED STATES FOREIGN POLICY).

³⁵ *Id.* at 21.

³⁶ See President Franklin D. Roosevelt, Message to the Congress Recommending Increased Armament for National Defense (Jan. 28, 1938), in DEVELOPMENT OF UNITED STATES FOREIGN POLICY, *supra* note 34, at 25.

³⁷ President Franklin D. Roosevelt, Message Sent to the President of Czechoslovakia and the Chancellor of Germany, and through the Secretary of State to the Prime Ministers of Great Britain and France (Sept. 26, 1938), in DEVELOPMENT OF UNITED STATES FOREIGN POLICY, *supra* note 34, at 30.

icy of the United States to settle international disputes by pacific means.³⁸ Nevertheless it soon became clear that peace was not assured.³⁹

On September 1, 1939, Hitler's Germany invaded Poland, and dashed all hopes for peace.⁴⁰ World War II had begun. Under Benito Mussolini, Italy officially entered the war as an Axis power in June of 1940, with its declaration of war on Britain and France.⁴¹ Although the stated policy of the United States was to "protect the neutrality, the safety and the integrity of [the] country, [while] at the same time keeping [the country] out of the war,"⁴² that policy gradually began to shift from one of neutrality to one of preparedness.⁴³ Preparation, however, did not aid the United States in thwarting the occurrences of December 7, 1941 — the Japanese attack on Pearl Harbor.⁴⁴ The attack made it clear that the United States simply could not remain neutral any longer.

"Always will we remember the character of the onslaught against us."⁴⁵ With these words, President Roosevelt asked for the declaration of the existence of a state of war with the Japanese Empire. Similarly, after Germany and Italy declared war on the United States, he requested the recognition of a state of

³⁸ See *id.*

³⁹ See President Franklin D. Roosevelt, Annual Message to Congress, the Capitol (Jan. 4, 1939), in *DEVELOPMENT OF UNITED STATES FOREIGN POLICY*, *supra* note 34, at 32.

⁴⁰ See 20 *THE WORLD BOOK ENCYCLOPEDIA* 380 (1966).

⁴¹ See *id.* at 381, 385.

⁴² President Franklin D. Roosevelt, Address Before a Joint Session of the Senate and House of Representatives Recommending Revision of the Neutrality Law, the Capitol, in *DEVELOPMENT OF UNITED STATES FOREIGN POLICY*, *supra* note 34, at 47. The change that the president was requesting, in the interest of real American security and neutrality, was for Congress to take action with respect to the embargo provisions of the Neutrality Act of 1935. Those provisions prevented the sale to a belligerent by an American factory of any completed implements of war, but they allowed the sale of many types of uncompleted implements of war, as well as general material and supplies. Such products could be taken in American flagships to belligerent nations, and the president felt that such allowances compromised the traditional foreign policy of the United States, that of neutrality. See *id.* at 49-50.

⁴³ See *THE WORLD BOOK ENCYCLOPEDIA*, *supra* note 40, at 390.

⁴⁴ See *id.* at 392.

⁴⁵ President Franklin D. Roosevelt, Address Before a Joint Session of the Senate and House of Representatives Asking for the Declaration of the Existence of a State of War with the Japanese Empire, the Capitol (Dec. 8, 1941), in *DEVELOPMENT OF UNITED STATES FOREIGN POLICY*, *supra* note 34, at 125.

war with those two countries,⁴⁶ remarking that "[t]he long known and long expected has thus taken place."⁴⁷ President Roosevelt maintained that there had never been "a greater challenge to life, liberty, and civilization,"⁴⁸ than that created by the Axis powers of Germany, Italy, and Japan. He was determined, therefore, to have the "forces of justice and of righteousness [prevail] over the forces of savagery and of barbarism."⁴⁹

Suddenly, immigrants of the Axis power countries found themselves at war with their homelands. But because they were in America, the land of opportunity, and freedom, it is doubtful that many of them imagined that their freedom would be significantly limited. The America to which they had come, however, found itself in a difficult and trying position. It was now a country at war, a nation in crisis, a land confronted with an emergency.⁵⁰ Many of the immigrants would soon realize that these circumstances would indeed dramatically change their lives in America.

C. *The Impact of World War II on the Japanese and Italian Americans*

Many Americans, including the President himself, were becoming convinced that the greatest threat to national security would come from within.⁵¹ The fear of "fifth columnists," aliens who allegedly waited to strike on orders from the AXIS powers, swept through the country.⁵² A California federal judge told newly sworn citizens to "[b]e on the alert, because . . . a democ-

⁴⁶ See President Franklin D. Roosevelt, Message to the Congress Requesting the Recognition of a State of War with Germany and Italy (Dec. 11, 1941), in DEVELOPMENT OF UNITED STATES FOREIGN POLICY, *supra* note 34, at 133. That morning, Italy and Germany had declared war against the United States. See *id.*

⁴⁷ *Id.*

⁴⁸ See *id.*

⁴⁹ *Id.*

⁵⁰ See President Franklin D. Roosevelt, Address Over the Radio in Celebration of Washington's Birthday (Feb. 23, 1942), in DEVELOPMENT OF UNITED STATES FOREIGN POLICY, *supra* note 34, at 143 (declaring that "[i]n time of crisis when the future is in the balance, we come to understand, with full recognition and devotion, what this Nation is, and what we owe to it").

⁵¹ See Fox, *supra* note 2, at 2. The justifications for suspecting some groups to be fifth columnists, and thus subjecting them to the status of enemy aliens will be discussed *infra* Part IV. Part II.C will only discuss the factual distinctions between the treatment of Japanese and Italian Americans.

⁵² See *id.*

racy like [the United States] . . . breed[s] what is known as the fifth column, . . . some of [whom] now seek to harm [this country].”⁵³ In 1942, The United States served as the home for approximately 4,000,000 aliens, and shortly after the Japanese attack on Pearl Harbor, 1,100,000 of these immigrants, who were citizens of Germany, Italy, and Japan, were classified “enemy aliens.”⁵⁴ Mr. Stefano Terranova’s life would never be the same.⁵⁵

Four pivotal dates in the lives of the so-called “enemy aliens” were December 7, 1941; January 25, 1942, when the government received pressure to act by the Roberts Commission; January 29, 1942, when the first enemy alien relocation order was issued by the Justice Department; and February 19, 1942, when President Roosevelt signed the infamous Executive Order 9066 authorizing the army to exclude anyone that was deemed necessary to exclude from restricted zones along the West Coast.⁵⁶ In January 1942, Rep. John Tolan of Oakland received a panic-stricken letter from one C.K. Schoell who stated:

We one and all would like to see precious time saved, and potential danger removed by migrating the aliens, one and all to interior concentration camps, pronto. We Americans could lose this war by continuing to be soft-hearted and soft-headed about American born Japs in particular, but Germans and Italians also This is no time to weed out the sheep from the goats FEAR is creeping more and more into the hearts of people we contact. So let our government do something, definite, and now.⁵⁷

On January 25, 1941, the Roberts Commission (headed by Supreme Court Justice Owen J. Roberts) released a report alleging that “Japanese-Americans on Oahu had aided Japan’s air assault.”⁵⁸ It was with this report that the “cry to do something

⁵³ *Id.* at 40 (quoting SAN FRANCISCO CHRONICLE, Jan. 6, 1942, at 8).

⁵⁴ See THE WORLD BOOK ENCYCLOPEDIA, *supra* note 40, at 410.

⁵⁵ See *supra* Part I.

⁵⁶ See Fox, *supra* note 2, at 41.

⁵⁷ *Id.* at 42. (quoting Letter from C.K. Schoell to John H. Tolan (Jan. 19, 1942) (on file with the University of California, Berkeley, Bancroft Library, file 67/14, folder A12.052)).

⁵⁸ Fox, *supra* note 2, at 41 (quoting Report of the Select Committee Investigating National Defense Migration, H.R. 1911, 77th Cong., 2d Sess. (1942)).

about the AXIS aliens on the mainland commence[d] in earnest."⁵⁹

California governor, Culbert Olsen told the commanding general of the Fourth Army and Western Defense Command in San Francisco, Lieutenant General John L. DeWitt, that federal action was imperative.⁶⁰ An informal meeting was set up to formulate resolutions, and it was DeWitt's view that the army was willing to take control of the aliens from the Justice Department if he could be assured that the army would have the power to force other agencies to cooperate. Congress acted on this viewpoint and "unanimously approved a resolution calling for the evacuation and internment of all enemy aliens and dual citizens, regardless of the fact that their children may have been American born."⁶¹ Just four days after the release of the Roberts Commission report, the Justice Department announced that, after consultation with General DeWitt, "all enemy aliens would be required to vacate specified areas of the West Coast."⁶² Finally, on February 19, 1942, in light of mounting fears of a West Coast invasion, President Roosevelt issued Executive Order 9066 authorizing military leaders to "prescribe military areas, and to impose restrictions on the movements of all persons within those areas."⁶³ The Order was characterized as a national defense measure,⁶⁴ and was based on the premise that "successful prosecution of the war require[d] every possible protection against espionage and against sabotage."⁶⁵

1. *The Plight of the Japanese-Americans*

Pursuant to Executive Order 9066, 120,000 men, women, and children of Japanese ancestry residing in the Western United States, Americans and resident aliens alike, were subjected to curfews, evacuation, and internment in detention camps.⁶⁶ Curfew orders were implemented whereby individu-

⁵⁹ Fox, *supra* note 2, at 41.

⁶⁰ See *id.* at 42.

⁶¹ *Id.* at 43.

⁶² *Id.*

⁶³ McLEMORE, *supra* note 19, at 200.

⁶⁴ See *id.*

⁶⁵ Barry Sullivan, *Justice at War*, 60 NOTRE DAME L. REV. 237 (1984) (book review).

⁶⁶ See *id.*

als of alien status could not leave their places of residence between the hours of 8:00 p.m. and 6:00 a.m.⁶⁷ Evacuation followed in March of 1942. "The first destination of the evacuees was a group of fifteen temporary assembly centers, . . . [and] from [there], the evacuees were transferred to ten permanent relocation centers."⁶⁸ By November of 1942, more than 110,000 people of Japanese ancestry, over 70,000 of whom were American citizens "had been forced from their homes and imprisoned without warrants or indictments."⁶⁹ These people were required to leave behind everything that they could not carry, and so, many of them sold their businesses, homes, and other possessions at "panic-sale" prices.⁷⁰

Life in the detention camps was very difficult for the internees. The largest of the camps, Poston, consisted of three units of barracks and other facilities intended to house approximately 20,000 people.⁷¹ The evacuees faced many problems related to food, water, and housing, for the apartments were badly constructed and small, that up to eight people were sometimes forced to live in just one room.⁷² Tensions mounted in the camps and, consequently, there was an increase in stealing, name calling, and violence.⁷³ Due to the unbearable living conditions and resulting violence, an intensive investigation was launched.

After an intense investigation into the treatment of the Japanese-Americans and the reasons behind such treatment, the Government realized that there was, in fact, no threat to national security creating a military necessity sufficient to justify the actions against people of Japanese ancestry.⁷⁴ Accordingly, in 1988, the United States government apologized to the Japanese Americans interned during World War II and "started paying reparations of \$20,000 each to survivors."⁷⁵

⁶⁷ See MCLEMORE, *supra* note 19, at 208.

⁶⁸ *Id.* at 200.

⁶⁹ *Id.*

⁷⁰ See *id.* at 203.

⁷¹ See *id.* at 204.

⁷² See MCLEMORE, *supra* note 19, at 205.

⁷³ See *id.*

⁷⁴ See *id.* at 209.

⁷⁵ James Brooke, *After Silence, Italians Recall the Internment: An Official Apology Is Sought From the U.S.*, N.Y. TIMES, Aug. 11, 1997, at A10.

2. *The Plight of Italian-Americans*

While many Americans are more than aware of the internment of Japanese-Americans during World War II, very few are aware that the United States government also restricted the freedom of 600,000 Italians who were legal residents of the United States, some of whom were also American citizens.⁷⁶ In fact, just hours after the attack on Pearl Harbor, hundreds of Italian-Americans previously classified as "enemy aliens" were taken into custody by FBI agents.⁷⁷ "Less than two weeks later, General DeWitt was recommending that all enemy aliens 14 years of age and older be removed to the interior."⁷⁸ The FBI xenophobe, J. Edgar Hoover, supported the measures.⁷⁹

By January 1942, the status of "enemy alien" was extended to all aliens of Italian descent (approximately 600,000).⁸⁰ These individuals were all required to register and re-register at post offices across the nation.⁸¹ In addition, they were forced to carry photo identification booklets at all times, they were subject to various travel restrictions, and were required to hand over "contraband" including cameras, weapons, flashlights, and short wave radios.⁸² A 70 year old lawyer from Yonkers, New York, John Romano, still remembers when FBI agents came knocking on the doors of Italian-Americans in the middle of the night during 1942.⁸³ The agents claimed that they were looking for transmitters.⁸⁴ Mr. Romano remembers that "they were

⁷⁶ See Hon. Dominic Massaro, Remarks at the Opening Ceremony of the Storia Segreta (Secret History) exhibit in New York (Nov. 6, 1995), in 143 CONG. REC. E1350-03, *E1351 (cited by Rep. Eliot Engel in his remarks in The House of Representatives (June 26, 1997)). For reference to the fact that American citizens of Italian decent were also subject to the restrictions see Fox, *supra* note 2, at 155 where one of the author's interviewees stated that a very good friend of his, and American citizen of Italian descent, was taken on the night of Dec. 7, 1941.

⁷⁷ See H.R. 2090, *supra* note 7.

⁷⁸ Dunn, *supra* note 3.

⁷⁹ See *id.*

⁸⁰ See H.R. 2090, *supra* note 7.

⁸¹ See *id.*

⁸² See *id.*; see also Brooke, *supra* note 75 (explaining that [t]he police swept through Italian-American neighborhoods in many cities, seizing from Italian citizens firearms, radios, cameras and flashlights that could be used as signaling devices.).

⁸³ See Carl Weiser, *Italian Americans Seek U.S. Apology*, GANNETT NEWSPAPERS, July 21, 1997.

⁸⁴ See *id.*

cold as steel, . . . , and they scared the hell out of the neighborhood.”⁸⁵

Ultimately, “about 1600 Italian-Americans were arrested, 250 (all Italian citizens) were interned in military camps for up to two years, another 250 were excluded, that is, ordered to move out of designated military zones, and 600,000 were forced to submit to curfews and other restrictions on their freedom.”⁸⁶ Additionally, Italian language schools were closed, Italian-American meetings became suspect, and Italian-American organizations, such as social clubs, were harassed.⁸⁷

A typical indication that a certain area was designated as a “restricted zone” was a sign resembling the following:

“ENEMY ALIENS PROHIBITED AREA NO. 28.

The United States Government requires all aliens of German, Italian, or Japanese nationality to vacate this area.”⁸⁸

Pursuant to these restrictions, about 2,000 Italians had to move out of Pittsburgh, a town on San Francisco Bay.⁸⁹ These restrictions often meant that an individual might only be required to move one block away to an area that had not been designated as restricted. The scarcity of wartime housing meant that many of those who were forced to relocate had much difficulty finding a new place to live.⁹⁰ One woman actually “took up residence in a chicken coop.”⁹¹ Frequently, those who were hardest hit by the relocation orders were elderly grandparents who would have to move out of their homes.⁹² In fact, “Joe Aiello, a United States resident for fifty-six years but still an Italian citi-

⁸⁵ *Id.*

⁸⁶ Rose Scherini, *The Other Internment: When Italian-Americans Were Enemy Aliens*, AMBASSADOR, Fall 1993, at 11-12. Further restrictions included the closing of Italian language schools and newspapers in northern California.

⁸⁷ See Hon. Dominic Massaro, Remarks at the Opening Ceremony of the Storia Segreta (Secret History) exhibit in New York (Nov. 6, 1995), in 143 CONG. REC. E1350-03, *E1351 (cited by Rep. Eliot Engel in his remarks in The House of Representatives (June 26, 1997)); see also Brooke, *supra* note 75.

⁸⁸ Dunn, *supra* note 3.

⁸⁹ See Brooke, *supra* note 75.

⁹⁰ See *Secret of WWII*, *supra* note 8.

⁹¹ *Id.*

⁹² See Scherini, *supra* note 86, at 12.

zen, was forced to leave his home in a wheelchair, and Placido Abono was moved out on a stretcher at the age of 97.⁹³

In total, establishment of the restricted zone along the California coast subjected some 10,000 Italian Americans to evacuation by February 24, 1942.⁹⁴ Rosina Trovato, a classified enemy alien, was one of those evacuees who could not believe what was happening to her. Sadly, she received her notice to evacuate on the very day that she learned that her son had gone down with the U.S.S. Arizona in Pearl Harbor.⁹⁵

Naturalized citizens were also among those subject to the restrictions. Nino Guttadauro, the business manager of a fisherman's association in San Francisco, was forced to leave the area and find a job in Reno.⁹⁶ Seventy-year-old Ettore Patrizi, editor-publisher of the West's major Italian language newspaper, *L'Italia*, had been a naturalized citizen since 1898.⁹⁷ He was hospitalized when he received the exclusion order and was given permission to delay his departure only until he was released from the hospital.⁹⁸ Sylvester Andriano, an attorney and former member of the City's Police Commission and Board of Supervisors, also received exclusion orders.⁹⁹

It was reported that "the mass evacuation and resettlement of as many as 200,000 enemy aliens from 86 forbidden zones in California was being planned by the U.S. Government."¹⁰⁰ During a Senate hearing in March 1942, Senator Johnson indicated that similar measures would have to be taken with regard to the Italians on the East Coast,¹⁰¹ but the implications were not as grave. The 500,000 Italians living on the East Coast were

⁹³ Brooke, *supra* note 75, at A-10.

⁹⁴ See H.R. 2090, *supra* note 7.

⁹⁵ See Brooke, *supra* note 75.

⁹⁶ See Scherini, *supra* note 86, at 14. Mr. Guttadauro's position as president of the local branch of the Italian War veterans earned him the exclusion. See *id.* The reasons why some individuals were subject to the restrictions will be discussed further *infra* Part IV.

⁹⁷ See *id.* Mr. Patrizi's newspaper was pro-Fascist. See *id.* The viability of the justification for restricting such individuals in the various way will be discussed further *infra* Part IV.

⁹⁸ See *id.*

⁹⁹ See *id.* [Mr. Andriano's] name was on the FBI's suspect list as head of the Italian Language School, legal counsel for the Italian Consulate, and president of the local Italian Chamber of Commerce. See *id.*

¹⁰⁰ H.R. 2090, *supra* note 7.

¹⁰¹ See *id.*

forced to carry identification cards and to report all job changes, however, no moves were made to relocate them.¹⁰²

Meanwhile, in California, curfews confined as many as 52,000 Italian enemy aliens to their homes between the hours of 8:00pm to 6:00am.¹⁰³ When they could leave their homes, they were forbidden to travel beyond a five mile radius.¹⁰⁴ A man by the name of Giuseppe DiMaggio could not even visit the San Francisco restaurant of his son, Joe DiMaggio.¹⁰⁵ Additionally, it is quite ironic these restrictions prevented many Italians from "visiting their sons in the U.S. military who were assigned to military installations."¹⁰⁶

The restrictions also caused many Italian-Americans to lose their jobs. Hit especially hard, were West Coast fishermen. Approximately 1,400 Italian-American fishermen in San Francisco¹⁰⁷ were prohibited from "fishing or even setting foot on the San Francisco waterfront after February 24, 1942."¹⁰⁸ For those fishermen on the Santa Cruz Municipal Wharf, these restrictions were enforced immediately after the bombing of Pearl Harbor.¹⁰⁹ While some of the boats simply remained idle,¹¹⁰ about 90 percent of San Francisco's fleet, had to be surrendered to the Coast Guard. Oddly, these restrictive measures were taken despite the fact that fishing was considered a national priority for the war effort.¹¹¹

Unlike the plight of the suicide victims mentioned earlier, the plight of these fishermen received some attention. In a front page article, the Santa Cruz Sentinel exclaimed, "Fishermen with 23 sons in Army and Navy Are Bound to Wharf While

¹⁰² See *id.*

¹⁰³ See *id.*

¹⁰⁴ See H.R. 2090, *supra* note 7.

¹⁰⁵ See The National Italian-American News Bureau, Fact Sheet: Una Storia Segreta; The Secret Story of Wartime Restrictions on Italians in The U.S. (1997) (unpublished fact sheet) (on file with the National Italian-American Foundation) [hereinafter NIAF].

¹⁰⁶ *Id.* "During World War II, more than 500,000 Americans of Italian descent served in the U.S. armed forces, constituting one of the largest segments of the U.S. army that numbered 12 million." *Id.*

¹⁰⁷ See FOX, *supra* note 2, at 68.

¹⁰⁸ H.R. 2090, *supra* note 7

¹⁰⁹ See Dunn, *supra* note 2.

¹¹⁰ See *id.*

¹¹¹ See Brooke, *supra* note 75.

Boats Lie Idle and Sea Food Is Needed.”¹¹² The government itself came under attack with an article reporting:

With its problems of separating fifth columnists from peaceful and worth residents of foreign birth, the Department of Justice has had no time to work out formulae which will safeguard the nation and at the same time allow such men as Santa Cruz's fishermen to earn a living for their families and add to the country's food supply.¹¹³

Furthermore, DeWitt himself was confronted with opposition to the restrictions. Malio Stagnaro, chief boatswain of the Navy during the war, took a trip to San Francisco to confront General DeWitt “about the hardships that his policies were creating.”¹¹⁴ Mr. Stagnaro walked away from that meeting characterizing an unmoved DeWitt as a “damn fool, . . . , a complete nut.”¹¹⁵

Perhaps the harshest of all the restrictions, however, were the internments. Beginning in 1939, President Roosevelt “had placed the responsibility for espionage, counterespionage, and sabotage in the hands of the FBI, the Military Intelligence Division (G-2) in the War Department, and the Office of Naval Intelligence (ONI) in the Navy Department.”¹¹⁶ Part of this responsibility entailed “compiling lists of those individuals whom the government believed intended to harm the United States” and, thus, should be arrested if war were to ensue.¹¹⁷ After the bombing of Pearl Harbor, therefore, hundreds of Italians who were previously classified under these lists as “dangerous aliens” were taken into custody.¹¹⁸ Although each internee was assured of a hearing in front of a three person

¹¹² Dunn, *supra* note 3.

¹¹³ *Id.*

¹¹⁴ Dunn, *supra* note 3.

¹¹⁵ *Id.* Stagnaro stated:

I went up to DeWitt to try to talk to him, . . . , and he wouldn't listen to any reason whatsoever, to nothing. Everybody to him was an enemy that wasn't an American citizen. I said, 'General, these are the greatest people in the world.' 'Well! he says, why didn't they become citizens?' I said, 'General, they never had the opportunity; never had an opportunity to learn; they raised big families and they stayed at home.'

Id.

¹¹⁶ Fox, *supra* note 2, at 152.

¹¹⁷ *Id.*

¹¹⁸ See H.R. 2090, *supra* note 7.

board,¹¹⁹ some 250 of them, mostly all Italian citizens, were shipped to internment camps at Missoula Montana and Ellis Island without any counsel or trial, and they were not advised of the charges against them.¹²⁰ These Italians were deemed to be sufficient security risks, justifying such confinement.¹²¹ The following letter written to a relative by one internee, Filippo Molinari, depicts the process undertaken by the government:

I was the first one arrested in San Jose the night of the attack on Pearl Harbor. At 11pm, three policemen came to the front door and two to the back. They told me that, by order of President Roosevelt, I must go with them. They didn't even give me time to go to my room and put on my shoes. I was wearing slippers. They took me to prison . . . and finally to Missoula, Montana, on the train, over the snow, still with slippers on my feet, the temperature at 17 below, and no coat or heavy clothes!¹²²

The internees at Missoula divided along generational lines.¹²³ The older men, who were usually long term United States residents, were very bitter at having been ripped away from their families.¹²⁴ The younger men, however, many of them sailors from twenty-eight Italian ships that were impounded in American ports, viewed the camp as "a safe and pleasant place to sit out the war."¹²⁵ They even nicknamed the camp "Bella Vista" (Beautiful View), for it was found at a "bend on the Bitterroot River, where wildflowers carpet meadows that stretch toward snow-capped mountains."¹²⁶

On October 12, 1942, Columbus Day, Attorney General Francis Biddle announced that, "Italian nationals in the U.S. would no longer be classified as 'enemies.'"¹²⁷ The move was designed to generate political support for the war.¹²⁸ President Roosevelt knew that he needed the support of the Italian-Americans, the nation's largest ethnic group, in its fight against the

¹¹⁹ See Scherini, *supra* note 86, at 12.

¹²⁰ See H.R. 2090, *supra* note 7.

¹²¹ See Brooke, *supra* note 75.

¹²² See Scherini, *supra* note 86, at 12.

¹²³ See Brooke, *supra* note 75.

¹²⁴ See *id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Dunn, *supra* note 3.

¹²⁸ See *id.*

Axis powers.¹²⁹ He also realized that the security measures being employed against Italian-Americans were counterproductive. President Roosevelt had particular need of the full support of Italian-Americans for the impending invasion of Italy.¹³⁰ After all, many of the Italian-American immigrants had sons fighting in the United States' military.¹³¹ In fact, "an estimated 500,000 Italian-Americans served in World War II."¹³² Therefore, Pursuant to Biddle's orders, General DeWitt "reluctantly lifted all military restrictions on [the] Italians" of California.¹³³

"For decades, Italian immigrant families who lived through World War II in the United States did not want to talk about the curfews, confiscations of fishing boats, forced moves from seacoast towns, police searches of their homes and internments at Fort Missoula."¹³⁴ This reluctance to talk, explains why this period of our nation's history has gone unnoticed. Or, perhaps it is because no list of Italian internees has ever been found.¹³⁵ Unfortunately, "the archives are eerily silent about the experiences of Italian . . . aliens during the four to eight months they were removed from their homes and jobs."¹³⁶ The decision to relocate them is recorded in rather "cold [and] impersonal detail," but nothing indicates what the effects of the policy upon the victims may have been.¹³⁷ In fact, no documents reveal that the aliens were moved.¹³⁸ Now, however, after fifty years of silence, steps have been taken to bring this unfortunate chapter of American history into the light.

III. H.R. 2442: WARTIME VIOLATION OF ITALIAN AMERICAN CIVIL LIBERTIES ACT

"Mr. Speaker, I rise today . . . to introduce a bill that calls on the President, on behalf of the United States Government, to

¹²⁹ See Brooke, *supra* note 75.

¹³⁰ See *id.*

¹³¹ See The National Italian-American News Bureau, Italian-Americans Rally Support For Government Investigation of Civil Rights Violations During World War II (1997) (unpublished fact sheet) (on file with the NIAF).

¹³² *Id.*

¹³³ Dunn, *supra* note 3.

¹³⁴ See Brooke, *supra* note 75.

¹³⁵ See H.R. 2090, *supra* note 7.

¹³⁶ FOX, *supra* note 2, at xiii.

¹³⁷ See *id.*

¹³⁸ See *id.*

formally acknowledge that the civil liberties of Italian-Americans were violated during World War II."¹³⁹

In 1994, Mr. Lawrence DiStasi, a University of California Berkeley history instructor, organized and displayed a historical exhibition entitled, "Una Storia Segreta: When Italian-Americans Were Enemy Aliens." This exhibition describes the plight of Italian aliens during World War II.¹⁴⁰ The traveling exhibit has brought much attention to what happened to Italians and Italian-Americans, and it has even sparked memories among viewers who find themselves suddenly reminded that their own families were affected in some way by the government restrictions of World War II.¹⁴¹ More importantly, however, the exhibit has generated interest among politicians including Congressmen Rick Lazio (R-Long Island, N.Y.) and Eliot Engel (D-Bronx, N.Y.), quoted above, who together first introduced H.R. 2090, (later H.R. 2442, 106th Cong., 1st Sess., and now Public Law No: 106-451) the "Wartime Violation of Italian-American Civil Liberties Act," in Congress on June 26, 1997.¹⁴²

The legislation details various findings, such as the many governmentally imposed restrictions placed upon the freedom of more than 600,000 Italian born immigrants in the United States during World War II, the forced relocations of many such immigrants situated in areas on the West Coast, and the arrests and internments of hundreds of other Italian immigrants.¹⁴³ The legislation also explains that during the war, Italians were the largest foreign born group in the United States, and explains that hundreds of thousands Italian-Americans sacrificed their lives to defend the United States in the war.¹⁴⁴ Finally, the legislation spells out clear objectives sought by its sixty Congressional co-sponsors.

¹³⁹ Representative Eliot Engel, Remarks in The House of Representatives (June 26, 1997), in 143 CONG. REC. E1350-03, *E1351.

¹⁴⁰ Lisa Hayden, *Italian and Italian-American Internment: Italians Seek Apology For WWII Uprooting*, CONTRA COSTA TIMES AND WEST COAST COUNTY TIMES, July 1-3, 199, available at <http://www.cnet.com/suntzu75/eo9066/9066it-1.html>.

¹⁴¹ See Brooke, *supra* note 75; see also *Secret of WWII*, *supra* note 8.

¹⁴² See H.R. 2090, 105th Cong., 1st Sess. (1997) (enacted).

¹⁴³ See *id.*

¹⁴⁴ See *id.*

The co-sponsors of the bill called upon former President William Jefferson Clinton, to formally acknowledge the violation of the civil liberties of Italian-American during World War II.¹⁴⁵ In addition, they sought to encourage federal agencies to support projects that would heighten public awareness of this forgotten episode, and called upon the President and Congress to provide direct financial support for a documentary film that would be used to educate the public.¹⁴⁶ Also, given that very little is known about this period of American history, the sponsors "recommend[ed] the formation of an advisory committee to assist in the compilation of relevant information regarding [the] matter and related public policy matters,"¹⁴⁷ and called upon the Department of Justice to publish a report detailing the role of the Government of the United States government in the unfortunate occurrence.

The impetus for the drafting of H.R. 2442 was the fact that more than fifty years after World War II, there still existed no official accounts of the episode regarding the Italian-Americans.¹⁴⁸ Although many of those people actually affected by the various restrictions of Executive Order 9066 are no longer alive, their family members want to make sure that what happened will not be forgotten.¹⁴⁹ Many hope that "by shedding light on this unfortunate chapter of history, we can ensure that it does not occur again."¹⁵⁰

IV. ANALYSIS OF The Bill

A. *The Government's Emergency Powers*

It is generally agreed that the government may exercise extraordinary powers during times of crisis in the name of national preservation.¹⁵¹ Alexander Hamilton himself noted that,

¹⁴⁵ See *id.*; see also H.R. 2090, *supra* note 7.

¹⁴⁶ See H.R. 2090, 105th Cong., 1st Sess. (1997) (enacted); see also See H.R. 2090, *supra* note 7.

¹⁴⁷ H.R. 2090, *supra* note 7.

¹⁴⁸ See *Secret of WWII*, *supra* note 8.

¹⁴⁹ See *id.*

¹⁵⁰ The National Italian-American News Bureau, Italian-Americans Rally Support For Government Investigation of Civil Rights Violations During World War II (1997) (unpublished fact sheet) (on file with the NIAF) (quoting NIAF Public Policy Chairman, John Calvelli, who is also Congressman Engel's chief of staff).

¹⁵¹ See STEPHEN DYCUS ET AL., NATIONAL SECURITY LAW 547-48 (2d ed. 1997).

"it is impossible to foresee or to define the extent and variety of national exigencies, and the correspondent extent and variety of the means which may be necessary to satisfy them."¹⁵² To that effect, the instrumentalities of the government must be flexible enough to meet new situations, especially grave ones, as they present themselves.

President Theodore Roosevelt was a staunch advocate of the expansive view of the emergency power. He is often quoted as saying:

Occasionally, great national crisis arise which call for immediate and vigorous executive action, and in such cases, it is the duty of the President to act upon the theory that he is the steward of the people . . . [The President has the] legal right to do whatever the needs of the people demand, unless the Constitution or the laws explicitly forbid him to do it.¹⁵³

Franklin Roosevelt was no less staunch and, in fact, he was more revolutionary. With the Great Depression and his election, presidential emergency powers experienced unprecedented expansion.¹⁵⁴ Roosevelt said that "unprecedented demand and need for undelayed action may call for temporary departure from the Constitution."¹⁵⁵ In fact, only the second emergency proclamation in the nation's history was issued during the first 100 days of his presidency, and Congress ratified it in just three days.¹⁵⁶ When the war first broke out in Europe in 1939, it was not apparent that Roosevelt was acting under any perceived inherent power.¹⁵⁷ By mid-1941, however, he began to adopt a

¹⁵² *Id.* at 548 (quoting THE FEDERALIST NO. 23 (Alexander Hamilton)).

¹⁵³ William C. Banks & Alejandro D. Carrio, *Presidential Systems In Stress: Emergency Powers In Argentina And The United States*, 15 MICH. J. INT'L L. 1, 42-3 (1993) (quoting THEODORE ROOSEVELT, THEODORE ROOSEVELT: AN AUTOBIOGRAPHY 551-553 (1913)).

¹⁵⁴ See Banks & Carrio, *supra* note 153, at 45.

¹⁵⁵ *Id.* at 45 (quoting Franklin D. Roosevelt, Inaugural Address (Mar. 4, 1933), reprinted in 2 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 15 (1938)).

¹⁵⁶ See *id.* at 45-6 (citing Proclamation No. 2039, 48 Stat. 1689 (1933) and Bank Conservation Act, 12 U.S.C. §§ 201-213 (1988)).

¹⁵⁷ See *id.* at 46. The authors state that the President initially "extended military and economic aid to the allies only on the basis of statutory authority, and maneuvered U.S. armed forces for the strategic benefit of the Allies only in keeping with the traditional discretion accorded the commander-in-chief." *Id.* (citing JOAN M. JENSEN, ARMY SURVEILLANCE IN AMERICA 1775-1980, at 212-25 (1991)).

broader interpretation of his powers. Defense plants, which had experienced strikes halting production, were seized and operated under his command, and an Office of Price Administration was established to examine proposals for the price fixing of scarce resources.¹⁵⁸ Incidentally, both of these actions were carried out without statutory authorization.¹⁵⁹

However broad the government emergency powers may be deemed, it remains imperative that the instrumentalities of government are not so flexible as to extend beyond its authority. Such over extension, would likely cause a rupture in the legitimacy of the system. Although an emergency may present the government with a situation where it must exercise powers not ordinarily available to it, there must be a limit to even those extraordinary powers. Such extraordinary power referred to include the governmental "authority to act in the domestic sphere in ways that would be impermissible but for the existence of a crisis."¹⁶⁰ When such a power is indeed exercised, the constitutional basis should be carefully scrutinized.¹⁶¹ The necessity for limits on such governmental power is particularly clear when war powers is invoked, for "it usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult."¹⁶² War powers, therefore, are potentially the most dangerous of all governmental powers.

B. *The Military Necessity Prompting The Actions Taken Against Japanese-Americans*

The bombing of Pearl Harbor created yet another emergency to which President Roosevelt responded with very broad, discretionary powers. Racial animus against the Japanese was increasingly generated by important Japanese military victories in the Pacific.¹⁶³ After President Roosevelt signed Executive Order 9066, General DeWitt "designated California,

¹⁵⁸ See *id.* at 46 (citing EDWARD S. CORWIN, *THE PRESIDENT: OFFICE AND POWERS* 1787-1957, at 245 (1957)).

¹⁵⁹ See Banks & Carrio, *supra* note 153, at 46.

¹⁶⁰ DYCUS, *supra* note 151, at 548.

¹⁶¹ See *id.* (quoting *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 146-7 (1948) (Jackson, J., concurring)).

¹⁶² See *id.* at 548 (quoting *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 146-7 (1948) (Jackson, J., concurring)).

¹⁶³ See Banks & Carrio, *supra* note 153, at 46.

Washington, Oregon and Southern Arizona as military zones and, to prevent sabotage and espionage, . . . he ordered the relocation of persons of Japanese descent residing in those areas."¹⁶⁴ Notably 70,000 of more than 110,000 Japanese descendants affected by the orders were U.S. citizens.¹⁶⁵ The policies enacted against the Japanese-Americans during World War II were deemed justified as a military necessity. The alleged basis for the measures was that "Japanese-Americans were predisposed to disloyalty, sabotage, and espionage because of their distinctive racial characteristics."¹⁶⁶

The Japanese were believed to be a very organized, clanish group that worked hard to maintain the Japanese language and traditions of community and family life.¹⁶⁷ It is true that the first generation Japanese immigrants, the Issei, frequently had very strong ties with Japan.¹⁶⁸ Such findings caused many to believe that the military threat to the West Coast during World War II was real and, consequently, that military necessity could justify the carrying out of the mass internment programs and the other restrictive measures instituted against Japanese Americans.¹⁶⁹ General DeWitt himself admitted, "it was not that there was insufficient time in which to make loyalty determinations; it was simply a matter of facing the realities that a positive determination could not be made, that an exact separation of the 'sheep from the goats' was unfeasible."¹⁷⁰ Thus, a military determination had been made upon the basis that distinguishing the loyal from disloyal was not feasible due to racial characteristics, and not because of any logistical constraint.¹⁷¹

Despite the race-based nature of this classification, the distinction withstood judicial review. A student at the University of Washington, Gordon Hirabayashi, intentionally violated both

¹⁶⁴ *Id.* at 47.

¹⁶⁵ *See generally id.*

¹⁶⁶ Peter Irons, *Justice At War: The Story Of The Japanese American Internment Cases*, 82 MICH. L. REV. 887 (1984) (book review).

¹⁶⁷ *See* MCLEMORE, *supra* note 19, at 201.

¹⁶⁸ *See id.* at 192, 201.

¹⁶⁹ *See id.* at 201.

¹⁷⁰ Lawrence Kent Mendenhall, Note, *Misters Korematsu And Steffan: The Japanese Internment And The Military's Ban On Gays In The Armed Forces*, 70 N.Y.U. L. REV. 196, 211 (1995).

¹⁷¹ *See id.* at 211.

General DeWitt's evacuation order and his detention order, and, Hirabayashi was convicted for his actions.¹⁷² Without deciding the more difficult issues of evacuation and internment, the Supreme Court of the United States upheld Hirabayashi's conviction for violating the curfew order.¹⁷³ The Court simply concluded, "reasonably prudent men charged with the responsibility of our national defense had ample ground for concluding that they must face the danger of invasion. . . ."¹⁷⁴ Chief Justice Stone conceded that a greater danger may indeed be posed by residents, legal or not, having ethnic ties with an invading enemy.¹⁷⁵ The decision legitimized racial discrimination by the government when the security of the nation was perceived at risk.

Fred Korematsu, like Hirabayashi, was an American citizen of Japanese descent who was subjected to the exclusion measures, despite the fact that his individual loyalty had not been questioned.¹⁷⁶ Korematsu's crime was his violation of the exclusion orders, and the Supreme Court was pressed to decide the issue of the constitutionality of the evacuation measures that had been raised, but not formally addressed, in *Hirabayashi*. The Court recognized that both convictions rested on the "same basic executive and military orders, all of which orders were aimed at the twin dangers of espionage and sabotage."¹⁷⁷ The Court, however, also recognized that exclusion constituted a far greater deprivation than did adherence to a curfew order.¹⁷⁸ Accordingly, the Court emphasized that all legal restrictions which curtailed the civil rights of any single racial group were immediately suspect and subject to rigid scrutiny.¹⁷⁹ In applying such a standard, the court noted that while "pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can."¹⁸⁰ Nevertheless, the

¹⁷² See Arval A. Morris & Peter Irons, Book Review, *Justice At War: The Story Of The Japanese American Internment*, 59 WASH. L. REV. 843, 851 (1984) (book review).

¹⁷³ See *id.* (quoting *Hirabayashi v. United States*, 320 U.S. 81, 105 (1943)).

¹⁷⁴ *Hirabayashi*, 320 U.S. at 94.

¹⁷⁵ See *id.* at 101.

¹⁷⁶ See *Korematsu v. United States*, 323 U.S. 214, 216 (1944).

¹⁷⁷ *Id.* at 217.

¹⁷⁸ See *id.* at 218.

¹⁷⁹ See *id.* at 216.

¹⁸⁰ *Id.*

court found the exclusion order to be a proper exercise of congressional and executive authority.¹⁸¹ It further agreed that "the exclusion of the group as a whole was a military imperative,"¹⁸² which justified the application of the orders to all ethnic Japanese, citizens or not. The fact that 5,000 American citizens of Japanese ancestry had not signed loyalty oaths to the United States seemed to aid the Court in accepting the military's claim that a separation of loyal from disloyal Japanese could not be accomplished.¹⁸³ Thus, "despite its declared use of strict scrutiny, the court declined to question seriously the military's conclusions, accepting the military's judgment that the refusal to sign loyalty oaths by a fraction of the Japanese affected by the orders made exclusion a military imperative."¹⁸⁴

The Court, however, rendered its decisions without knowledge of the Office of Naval Intelligence's Ringle Report, a report that was known to General DeWitt.¹⁸⁵ The report estimated that fewer than three percent of Japanese Americans in the United States would act as agents or saboteurs of Japan.¹⁸⁶ Extensive research into the matter revealed that the Ringle Report existed, and that there was no basis for the military necessity justification.¹⁸⁷ Thereafter, in January of 1983, Fred Korematsu filed a *coram nobis* petition.¹⁸⁸ The Court vacated his conviction on the grounds of prosecutorial misconduct, including "deliberately omitt[ing] relevant information and

¹⁸¹ See *id.* at 218-19.

¹⁸² *Korematsu*, 323 U.S. at 219.

¹⁸³ See *id.*

¹⁸⁴ Lawrence Kent Mendenhall, Note, *Misters Korematsu And Steffan: The Japanese Internment And The Military's Ban On Gays In The Armed Forces*, 70 N.Y.U. L. REV. 196, 209 (1995).

¹⁸⁵ See Morris & *supra* note 172, at 852.

¹⁸⁶ See *id.*

¹⁸⁷ See Monroe Leigh, *Domestic Sovereign Immunity — Statute Of Limitations — Taking Clause — American-Japanese Evacuations Claims Act*, 80 AM. J. INT'L L. 648, 649 (1986). In 1980, Congress established the Commission on Wartime Relocation and Internment of Civilians (CWRIC) for the purpose of conducting an investigation into the internment program. The CWRIC report, released in 1982, concluded that there was no basis for the military necessity justification and that the U.S. Government officials knew this at the time the internment program was implemented and when the *Hirabayashi* case was briefed and argued before the Supreme Court. See *id.*

¹⁸⁸ See Philip Tajitsu Nash, *John Tateishi's Moving For Redress And Justice For All: An Oral History Of The Japanese American Detention Camps*, 94 YALE L.J. 743, 751 (1985) (book review).

provid[ing] misleading information in papers before the Supreme Court.”¹⁸⁹ The omitted information was indeed critical because it went directly to the heart of the military justification argument.¹⁹⁰

Japanese Americans were appropriated restitution for their World War II internment via the Civil Liberties Act of 1988.¹⁹¹ The Act established many purposes, a number of which are very similar to those sought by the drafters of the Wartime Violation of Italian American Civil Liberties Act.¹⁹² Some of the objectives of the Civil Liberties Act of 1988 were to acknowledge the injustices of the evacuation, relocation, and internment suffered by the many Japanese Americans during World War II, to extend an apology for such injustices, to provide for a public education fund to finance efforts to educate the public about the injustices, and to make restitution to those who were interned.¹⁹³ Thus, Congress admitted that the United States had committed a tremendous injustice when it took such measures against Japanese American citizens and permanent resident aliens upon realizing that the government could not offer adequate security justifications for its actions.¹⁹⁴

C. *The Viability of H.R. 2442*

Although H.R. 2442, now Public Law No. 106-451, seems to be very similar to the Civil Liberties Act of 1988, it cannot be said that Italian-Americans are claiming that their situation in World War II was at all comparable to that of Japanese Americans. “Italian . . . aliens and their families knew no Manzanar, no Heart Mountain, no Tule Lake, and no fire sales.”¹⁹⁵ The internment camp in Missoula in which many Italians were kept was nicknamed Bella Vista, or Beautiful View.¹⁹⁶ About one hundred of the internees were entertainers, (taken from a lux-

¹⁸⁹ *Korematsu v. United States*, 584 F. Supp. 1406, 1420 (N.D. Cal. 1984).

¹⁹⁰ *See id.* at 1420; *see also* Nash, *supra* note 188, at 751.

¹⁹¹ *See* 50 U.S.C. § 1989 (1988).

¹⁹² *See* H.R. 2090 *supra* note 7.

¹⁹³ *See* 50 U.S.C. § 1989 (1988).

¹⁹⁴ *See* Manjusha P. Kulkarni, Note, *Application Of The Civil Liberties Act To Japanese Peruvians: Seeking Redress For Deportation And Internment Conducted By The United States Government During World War II*, 5 B.U. Pub. Int. L.J. 309, 322-3 (1996).

¹⁹⁵ Fox, *supra* note 2, at xv.

¹⁹⁶ *See generally* Brooke, *supra* note 75.

ury cruise ship that was caught in the Panama Canal) who put on shows such as operas and comedies about once a week.¹⁹⁷ Furthermore, it does not appear that food was scarce, for the staples of beef, sugar and, butter were plentiful at the camp.¹⁹⁸

In addition, the minimal evidence of the occurrence that actually exists indicates that most all of the Italian immigrants who were subjected to the various restrictions were Italian citizens, whereas at least two-thirds of the Japanese affected were American citizens.¹⁹⁹ Moreover, those Italians and Italian-Americans who were arrested were individuals who the FBI and other federal agencies had previously deemed dangerous to American security.²⁰⁰ Most of those internees lived near the coasts or defense installations.²⁰¹ To add to the differences, it is important to note that "the anti-Japanese measures lasted the length of the war, while the anti-Italian restrictions mostly ended after less than a year."²⁰²

Various findings also indicate that the American citizens of Italian descent who were subjected to the various measures were, in some sense, pro-Fascist. For example, "all of the members of the Italian War Veterans of World War I were either interned or excluded."²⁰³ The group was considered suspect because its headquarters was in Rome and because money was being sent from the U.S. branch to Italy for war orphans and widows.²⁰⁴ In May of 1942, California's State Un-American Activities Committee held hearings on alleged Fascist activities in San Francisco, the testimony of which resulted in the exclusion of at least twenty naturalized American citizens, men and women alike.²⁰⁵ Other American citizens who were affected by the restrictions included the editor-publisher of a pro-Fascist Italian language newspaper,²⁰⁶ and the head of the Italian Lan-

¹⁹⁷ See *id.*

¹⁹⁸ See *id.*

¹⁹⁹ See *id.*

²⁰⁰ See Dunn, *supra* note 3.

²⁰¹ Weiser, *supra* note 83.

²⁰² Brooke, *supra* note 75.

²⁰³ Scherini, *supra* note 86, at 12.

²⁰⁴ See *id.*

²⁰⁵ See *id.*

²⁰⁶ See *id.* at 14. Ettore Patrizi was the editor publisher of, *L'Italia*. While the papers "editorial stance had been strongly pro-Mussolini, [it] became pro-American after December 7, 1941." *Id.*

guage School who was also the legal counsel for the Italian Consulate and the Local Chamber of Commerce President.²⁰⁷

Thus, there do seem to be marked differences between the plights of the Italian and Japanese immigrants during World War II. Perhaps it can be argued by opponents of the Wartime Violation of Italian American Civil Liberties Act that such differences negate the necessity of the measures called for by the law. In fact, the Justice Department of the United States has already said that "since a relatively small group of ethnic . . . Italians received exclusion orders, no further action is necessary."²⁰⁸

The requests made by the drafters of the bill, however, do not seem unreasonable, even in light of the findings regarding the Italian ordeal. The full story of this episode has never been revealed, and for many, telling the story is the main focus. No restitution is demanded at this time, and no direct accusations, at least in the text of the law, are being made.

Of course, in order to get at the entire account, an extensive investigation will have to be conducted. The specially formed committees will have to look into allegations that the civil rights of many Italian-Americans were indeed violated, for there was never any "indication that any of [the] enemy aliens were engaged in any treasonous activity whatsoever."²⁰⁹ Indeed, it has been claimed, "with no evidence of sabotage or spying, the measures came to be seen as counterproductive."²¹⁰ In fighting such claims, the government will have to, among other things, look seriously at the actual fifth column threat posed by the Italians affected by the restrictions, especially those who were subjected to the measures simply because they had not attained the American citizenship status. Although it is clear that before World War II there had been "an Italian-American flirtation with Fascism, or more accurately, with Mussolini,"²¹¹ it is equally clear that most of the flirtation ceased almost im-

²⁰⁷ See *id.* Sylvester Andriano was a highly respected community attorney who was a former member of the city's Police Commission and Board of Supervisors at the time of his exclusion. See *id.*

²⁰⁸ Scherini, *supra* note 86, at 14.

²⁰⁹ Booke, *supra* note 75.

²¹⁰ See *id.*

²¹¹ Fox, *supra* note 2, at 29.

mediately when Mussolini joined forces with Hitler.²¹² There, of course, may have been small groups of Italians who could be considered disloyal, as were the German Bundists,²¹³ but the fact remains that the number may have been so small so as to negate any need for across the board restrictions against the Italians. Such facts would seem to be integral to the governmental decision making process and, as seen in *Korematsu*, they may be key in evaluating the justification of such measures.

In addition, a due process argument exists. It is important to consider that where hearings were held, internees were not advised of the charges, nor did counsel represent them.²¹⁴ Furthermore, the government should be prepared to offer an explanation for the division of families and for the loss of jobs, homes, and business that resulted from forced adherence to curfews and relocations. Research reveals that many fishermen lost their boats, and hundreds more had to give up their jobs as bakers, restaurant workers, and garbage men because of the curfews.²¹⁵ These people want an explanation for their suffering and, given that "the archives are eerily silent about the experience of Italian . . . aliens during the four to eight months they were removed from their homes and jobs,"²¹⁶ such an explanation seems warranted.

V. CONCLUSION

In sum, it appears that many Italian-Americans simply want the injustices imposed upon them during World War II to be acknowledged and put in the history books.²¹⁷ The Wartime Violation of Italian-American Civil Liberties Act does not stand for the notion that the government had absolutely no right to take such measures against the Italians. Rather, it is a call for an investigation into the matter.²¹⁸ If the investigation called for by H.R. 2442 reveals that a true military necessity did exist so as to justify the various restrictions on civil liberties, then let

²¹² See *id.* at 30.

²¹³ See *id.* at 36

²¹⁴ See Scherini, *supra* note 86, at 12.

²¹⁵ See Brooke, *supra* note 75.

²¹⁶ Fox, *supra* note 2, at xiii.

²¹⁷ See generally Weiser, *supra* note 83.

²¹⁸ See H.R. 2090 *supra* note 7.

that information be placed into the history books as well. The true story should be revealed, not only for the sake of the Italian-American community in the United States, but also for the sake of the United States government itself, lest a small scale *Korematsu* controversy should develop.